

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

MARK S. HIDER,	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil No. 04-60-P-C
	)	
CITY OF PORTLAND,	)	
	)	
et al,	)	
	)	
Defendants	)	

***DECISION RECOMMENDING THAT THE MOTION TO DISMISS BE GRANTED***

The defendants in this civil action, The City of Portland, Michael Chitwood, and Bethann Poliquin, move to dismiss (Docket No. 5) Mark Hider's complaint. Hider has filed two pleadings in response. One is an amended complaint with an incorporated memorandum of law in opposition to the motion to dismiss. (Docket No. 7.) The other is a reply to the defendants' reply to the amended complaint/opposition (Docket No. 8) which the plaintiffs have moved to strike on the grounds that such a pleading is not permitted under the Federal Rules of Civil Procedure (Docket No. 9).

I recommend that the Court grant the defendants' motion as to Count I, the sole federal claim. This is a count, in both the original and the proposed amended complaint, that Hider brings under 42 U.S.C. § 1983. This count is complaining about the manner in which a September 2003 request by Hider for an internal affairs review by the Portland Police Department with respect to certain actions taken in Hider's criminal case was handled by Chitwood. Hider seems to be complaining that due to Chitwood's interference with this request, the review did not proceed. In his amended complaint

Hider also identifies the procedures for the city's Police Citizen Review Subcommittee and states that Chitwood did not comply with these. Like the defendants, I can identify no federal statutory or constitutional right of Hider's that could be infringed by the internal affairs review process. Certainly, police officers subject to such a review might be able to assert an entitlement to certain constitutional protections, but Hider has no property interest in or entitlement to such a proceeding, and cannot, therefore, bring a claim on a procedural or substantive due process theory. R.I. Broth. Correctional Officers v. Rhode Island 357 F.3d 42, 49 (1st Cir. 2004) ("The lack of any property interest also disposes of the substantive due process claim.") Accordingly, Count I, the lone federal count in this action, does not state a 42 U.S.C. § 1983 claim.<sup>1</sup> With respect to the remaining counts, these are clearly pled as state law counts and -- as the statute of limitation dispute raises questions of state law vis-à-vis the accrual of the cause of action and the availability of tolling with respect to the statute of limitation -- I recommend that the Court decline to maintain supplemental jurisdiction over the remainder of the action. 28 U.S.C. § 1367; Lares Group, II v. Tobin, 221 F.3d 41, 45 (1st Cir. 2000). The motion to strike (Docket No. 9) Hider's reply to the defendants' reply is moot.

For these reasons, I recommend that the Court **GRANT** the motion to dismiss as to Count I.

#### NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by

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<sup>1</sup> I also note that if this count attempted to connect the internal review procedure with alleged violations of Hider's rights identified in the remaining counts, as a general rule Hider could not pursue 42 U.S.C. § 1983 relief without first demonstrating that his state court conviction had been reversed, expunged, or otherwise declared invalid in a habeas proceeding. See Heck v. Humphrey, 512 U.S. 477 (1994).

the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

June 10, 2004.

/s/ Margaret J. Kravchuk  
U.S. Magistrate Judge

HIDER v. PORTLAND et al  
Assigned to: JUDGE GENE CARTER  
Referred to: MAG. JUDGE MARGARET J.  
KRAVCHUK  
Demand: \$  
Lead Docket: None  
Related Cases: None  
Case in other court: None  
Cause: 28:1343 Violation of Civil Rights

Date Filed: 03/31/04  
Jury Demand: Plaintiff  
Nature of Suit: 440 Civil Rights:  
Other  
Jurisdiction: Federal Question

**Plaintiff**

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**MARK S HIDER**

represented by **MARK S HIDER**  
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PRO SE

V.

**Defendant**

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**CITY OF PORTLAND**

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**MICHAEL CHITWOOD, *In His  
Individual And Official Capacity  
Of Chief Of Police***

represented by **MARK E. DUNLAP**  
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*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**BETHANN POLIQUIN, *In Her  
Individual And Official Capacity  
As Attorney For The Chief Of  
Police And The Portland Police  
Department***

represented by **MARK E. DUNLAP**  
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*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*